IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-8-2007

CORAM

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR

W.P.No.18507 of 2006
(O.A.No.507 of 1995)

K. Arumugham ... Petitioner [Applicant].

Vs

1. The Director of Employment & Training, Chepauk, Madras - 5.

2. The Assistant Director/Enquiry Officer, Directorate of Employment & Training, Chepauk, Madras - 5.

3. The State of Tamil Nadu, rep.by the Secretary to Government, Labour & Employment Department, Fort St.George, Madras - 600 009. ... Respondents [Respondents].

This writ petition came to be numbered under Article 226 of Constitution of India, by way of transfer of O.A.No.507 of 1995 from the file of the Tamil Nadu Administrative Tribunal with the amended prayer to call for the records on the file of the 3rd respondent in connection with the order passed by him in G.O.(D)No.1334 dated 8.11.1995 and also on the file of the first respondent in connection with the order passed by him in his proceedings Se.Mu.A.No.O.Na.2/72820/92 dated 3.8.1994 and quash the same and direct the respondent to reinstate the petitioner in service with all monetary and service benefits by a writ of certiorarified mandamus of any other appropriate writ.

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For Petitioner : Mr.R.Singaravelan

For Respondents : Mr.V.Manoharan
Government Advocate

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O R D E R

Prayer in the writ petition is to quash G.O.(D)No.1334 dated 8.11.1995 on the file of the third respondent and the proceedings of the first respondent dated 3.8.1994 and to direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

2. The brief facts necessary for disposal of the writ petition are as follows:

(a) The petitioner was selected and appointed as Junior Assistant through the Tamil Nadu Public Service Commission (hereinafter referred as TNPSC) and he joined in service on 27.1.1966. He was promoted to the post of Assistant on 12.7.1975 and subsequently promoted as Junior Employment Officer on 24.10.1984.

(b) While working as Junior Employment Officer in the Sub-Employment Office at Aalangayam, Vellore District, he was placed under suspension by order dated 30.3.1992 and subsequently a charge memo was issued on 18.8.1992. One of the charge levelled against the petitioner was that he had created documents by committing forgery in favour of M/s.Srinivasan, Visakan and Raju, as if they are seniors in the Employment registration, who actually never registered their names in the said employment office. Other similar charges were also framed in the said charge memo.

(c) The suspension order was challenged by the petitioner in O.A.No.3004 of 1993 and the same was dismissed by the Administrative Tribunal with a direction to complete the enquiry in respect of the charge memo and pass final orders within a period of three months and if on any account the enquiry could not be completed, the petitioner was directed to be reinstated in service by revoking the order of suspension, without prejudice to the disciplinary proceeding. For the said charge memo, petitioner submitted his explanation on 20.8.1993 and denied the charges.

(d) An Enquiry Officer was appointed to conduct enquiry and after completion of the enquiry, the Ennquiry Officer submitted his report holding all the charges as proved. Petitioner participated in the enquiry and based on the Enquiry Officer's report, the final order was passed whereby the petitioner was compulsorily retired from service by order dated 3.8.1994.

(e) The said order was challenged before the Government by filing an appeal and the appeal was also dismissed by the Government by passing G.O.(D)No.1334, dated 8.11.1995 and therefore the said orders of compulsory retirement, confirmed in appeal is challenged in the O.A.507 of 1995, which is transferred to this Court and numbered as the above writ petition with a prayer to quash the said orders and for consequential reinstatement of the petitioner in service with monetary benefits.

3. The original application was filed in the year 1994 and at that time, the petitioner was aged 53 years. Now the petitioner is aged about 66 years and therefore the prayer for reinstatement cannot be granted at this stage. The learned counsel for the petitioner submitted that if the order of compulsory retirement is quashed the petitioner will be in a

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position to get salary and other benefits till the date of his retirement and also revision of pension after retirement.

4. The respondents filed counter affidavit stating that the four charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the petitioner being serious in nature, which were also found proved in the enquiry, based on which the punishment was imposed, that too taking lenient view of the matter, considering the long number of years of service of the petitioner, he was compulsorily retired. The appellate authority also confirmed the said order and therefore the order passed by the respondents are just and proper and no interference is called for.

5. The learned counsel for the petitioner at the time of arguments submitted that even though the petitioner was selected and appointed through TNPSC, the charge having been framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the view of the TNPSC has not been obtained by the Disciplinary Authority before passing the order of compulsorily retirement and the appellate authority, before passing the orders in the appeal sought the view of the TNPSC and therefore there is procedural violation under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

6. The learned counsel appearing for the respondents on the other hand submitted that the alleged procedural violation has not vitiated the proceedings since the view of the TNPSC was obtained by the appellate authority before passing orders in the appeal confirming the punishments and therefore there is substantial compliance of Rule 17(b) and the charges being serious in nature, a lenient punishment was imposed and no indulgence can be shown to the petitioner.

7. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as respondents.

8. The Enquiry Officer based on the oral and documentary evidence held that the charges are proved and gave the following findings with regard to charge Nos.1 to 4.

> "7. As regards the first charge, the Regn.No.3766/91 given to the candidates Thiru G.Srinivasan actually belonged to a candidate by name Thiru R.Suresh as per records. The applicant had accepted during the enquiry that it was his signature in the list which was sent to the employer. He had contended that the records were put up to him by his Assistant for selection and he made the selection believing his Assistant. However, as Head of the Office the applicant had written the basis of selection and also signed the list sent to the employer and was therefore fully responsible for the irregularity. The

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Enquiry Officer had clearly proved the complicity between the applicant and the Assistant concerned in the preparation of the bogus card in this case and also the nomination of the candidate against the vacancy.

8. Regarding charge (2), the applicant had admitted during the enquiry that he had attested the entries put up by the Assistant to the effect that the index card of the candidate Thiru A.Visakan was already transferred to the District Employment Office, Adyar and a duplicate card had been prepared and submitted. The applicant had also attested the entries in the preparation of duplicate cards register which he had accepted during the enquiry. The applicant had also attested the entries relating to the candidate made in the record of registration. In fact, the candidate Thiru Visakan had not registered at all in the Employment Office. The Enquiry Officer has reported that the applicant had not denied having prepared the bogus index cards or having made entries in the connected records during the enquiry. It was therefore held that the bogus index card was prepared jointly by the applicant and the Assistant concerned and neither of them denied the irregularity during the enquiry.

9. Regarding charge (3) the candidate, Thiru Raju was allotted Regn.No.5742/90-T.2399/86 with seniority from 30.8.82 at the Employment Officer, Vellore without any basis as per entry made in the Record of Registration. This entry was made in the record of registration belonging to the former District Employment Officer (Technical Personnel), Vellore and this register was maintained at the Sub Employment Office, Alangayam by the applicant. These entries were made in the handwriting of the Assistant and attested by the applicant in this case. On actual verification, it was found that the Regn.No.T/2399/86 actually belonged to another candidate by name Thiru A.Settu who had registered as a candidate at the District Employment Office (Technical Personnel), Vellore. One other factor which was brought to light is that while all the entries in the register were typed by them, the entries regarding this candidate alone were made in the handwriting of the Assistant. The applicant had accepted during the enquiry that the attestation of these entries was made by him. It was already established during the enquiry that the entries in respect of the candidate Thiru Raju were bogus and that the applicant had attested the entries in the record of registration. It was proved that the applicant had misused his powers for the purpose of preparing a bogus

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registration card and therefore this charges was held proved.

10. As regards the charge (4), the charge was based on the revealition made in charges (1) to (3). Having committed the lapses pointed out in charges (1) to (3) the applicant had clearly violated the Rule 20 of the Tamilnadu Government Servants Conduct Rules. Having been an author to the preparation of bogus index cards and sponsoring a candidate against the vacancy of classifying him as a physically handicapped candidate, the applicant had clearly violated the Rule 20 of the Government Servants Conduct Rules."

The said findings are seriously disputed by the learned counsel for the appellants and the main contention raised was, before imposing the order of punishment, the view of the TNPSC has not been obtained as required under Rule 17(b). The petitioner being Assistant Employment Officer, and the charges being forgery and sponsoring candidates whose name are not registered with the Employment Exchange, are very serious and the said charges are also proved as stated above in the Enquiry.

9. The Disciplinary Authority considered the charges and the findings given by the Enquiry Officer and came to the conclusion that for the proved charges, the petitioner deserves to be dismissed from service. However, considering that the said dismissal will affect the family of the petitioner, on humanitarian consideration lesser punishment viz., Compulsory retirement from service was imposed. It is also stated that the petitioner is entitled to get full pension and gratuity under Rule 39 of the Tamil Nadu Pension Rules, 1978. The said order is also confirmed by the Government through G.O.(D)No.1334 Labour and Employment Department dated 8.11.1995. The Disciplinary Authority on appreciation of evidence came to the factual finding that the charges 1 to 4 are proved and the charges proved are creation of false records and the same is liable for punishment under the Indian Penal Code. The said findings are findings of fact as extracted in paragraph 8 of this judgment. There is no perversity in the said findings. Hence the same are confirmed.

10. The procedural violation viz., not consulting with the TNPSC before imposing the order of punishment was also taken care of by the appellate authority and the views of the TNPSC was sought for. The TNPSC through its reply dated 31.7.1995 addressed to the Government expressed its view as follows:

"Thiru K.Arumugam (appellant), formerly Junior Employment Officer, has been inflicted with the punishment of compulsory retirement from service by the Director of Employment and Training following the procedures laid down under rule 17(b) of Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. The delinquent, when he was working as Junior Employment Officer at Alangayam, had manipulated the

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office records to remove certain names and insert certain names for no valid reasons. As an example one Thiru G.Srinivasan was sponsored by the delinquent officer in the physically handicapped seniority without any identity card or Medical Certificate. Thiru Srinivasan had deposed before the District Employment Officer, that he was tempted by a tall bespectacled person, for his name to be sponsored to an interview on payment of Rs.5000/-. Mr.Srinivasan as per the direction approached a fat individual at the instance of the delinquent officer and got his signature in the card. Investigations have confirmed that Thiru G.Srinivasan was not a registrant of a sub employment office at Alangayam. The Registration Number indicated against Thiru G.Srinivasan belong to Thiru R.Suresh. The concerned letter was not typed by the Typist of the Sub-employment office but got typed from outside. When the delinquent officer was asked as to how the name of Srinivasan was sponsored, he said that the note was prepared by Thiru Mohandoss, Assistant and he mechanically signed it. In a similar way, the bogus cards were prepared for Mr.Visagan and there were alterations in the Register which indicate the mala fide intentions and on the same line the cards were also prepared to one Thiru S.Raju whose name was also not registered in the office. All these have been done with the connivance of the other office employees like Thiruvalargal Kumar and Mohandoss. On Enquiry, the appellant said that he trusted the Assistants who prepared the note and just he signed the note. A Government servant who claims to have put in 28 years of experience, cannot claim that he relied solely on his Assistants for the sponsorship and he mechanically signed them. This can only speak of irresponsibility. In short he is guilty of introducing three names (1) Srinivasan (2) Visagan, and (3) Raju in the register without proper documents to supplement.

The Enquiry Officer had held that all the charges as proved and for the proven charges, he was compulsorily retired on 9.8.1994. In the meanwhile, the appellant had filed an original Application before the Tamil Nadu Administrative Tribunal and on the Original Application the Tribunal has directed the Government to pass the final orders before the hearing on 31.7.1995. For the proven charges which are serious in nature with malafide intention, the punishment of compulsory retirement with a facility to draw full compensation pension and gratuity as per rule 39 of Tamil Nadu Pension Rules cannot be considered

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> excessive. Therefore the Commission feels that the compulsory retirement of the delinquent officer from 9.8.1994 Forenoon is just and proper as this involved a matter of moral turpitude."

The said view expressed by the TNPSC was considered by the third respondent Government, who dismissed the appeal considering the lenient view already taken by the disciplinary authority and rejected the appeal as it is devoid of merits. In the order of the appellate authority it is specifically found that TNPSC in its views extracted above, has clearly stated that for the proven charges, the punishment of compulsory retirement is fully justified. The said view is reiterated in the order of the appellate authority. Therefore the appellate authority cannot be blamed for not passing any detailed order and it is in fact an order with reasons and in compliance with Rule 23 of the Tamil Nadu Civil Services (Discipline and appeal) Rules. When the views of the TNPSC becomes part and parcel of the order of the appellate authority, further detailed reasons need not be given by the appellate authority.

11. The contention of the learned counsel for the petitioner that the disciplinary authority has not obtained the view of the TNPSC and therefore the punishment imposed is vitiated cannot be accepted in view of the fact that obtaining views of the TNPSC is only procedural matter. Even though the Disciplinary Authority has not obtained the views of the TNPSC before ordering punishment, the appellant authority, before confirming the order of punishment, obtained the views of the TNPSC and concurred with the punishment imposed by the Disciplinary Authority. Hence substantial compliance of Rule 17(b) is made out and therefore I am of the view that there is no statutory violation, affecting the rights of the petitioner and there is also no denial of justice.

12. The Supreme Court in the decision reported in (2006) 4 SCC 348 (A.Sudhakar v. Postmaster General, Hyderabad and another), considered similar issue and in paragraph 26 held as follows:

> "26. It is well settled that those principles of natural justice are not embodied principles. The requirements contained in Article 311(2) of the Constitution in view of the decision of this Court in Khem Chand v. Union of India (AIR 1958 SC 300) are held to be as a part of the principle of natural justice. The courts in the aforementioned situation are required to see as to whether non-observance of any of the said principles in a given case has resulted in denial of justice. If there had been substantial compliance with the procedure, the court may not interfere. (See State of U.P. v. Om Prakash Gupta ((1969) 3 SCC 775) and Kuldeep Singh v. Commr. of Police ((1999) 2 SCC 10)."

13. The charges being very serious, which are proved in the enquiry conducted, the Disciplinary Authority exercised his discretion and imposed

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the punishment of compulsory retirement against the petitioner with right to get full pension and gratuity. The appellate authority also confirmed the same. The said punishment cannot be found disproportionate to the gravity of the delinquency.

There is no merit in the writ petition and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr

To

1. The Director of Employment & Training,
   Chepauk, Madras - 5.

2. The Assistant Director/Enquiry Officer,
   Directorate of Employment & Training,
   Chepauk, Madras - 5.

3. The Secretary to Government,
   Labour & Employment Department,
   Fort St.George, Madras - 600 009.

+ 1 CC To Mr. R.Singaravelan, Advocate SR NO.54453

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